

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009 (Filed April 13, 2006)

PREHEARING CONFERENCE STATEMENT OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)

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I. INTRODUCTION AND BACKGROUND

In accordance with the Rules of Practice and Procedure of the California Public

Utilities Commission (the "Commission") and the *Administrative Law Judges' Ruling*Regarding Comments on Staff Natural Gas Proposal and Notice of Prehearing

Conference (the "ALJ Ruling"), dated July 12, 2007, San Diego Gas & Electric Company

("SDG&E") and Southern California Gas Company ("SoCalGas") hereby submit these

comments in advance of the prehearing conference to be held August 1, 2007.

On April 13, 2006, the Commission adopted its *Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies* (the "OIR"). The OIR indicated that the rulemaking would be split into two phases. In Phase I of the rulemaking, the Commission considered threshold issues related to adoption of a Greenhouse Gas ("GHG") emissions performance standard ("EPS"). Phase II will focus on development of joint recommendations regarding regulatory treatment of GHG emissions in the electricity and natural gas sectors to be presented by the

Commission and the California Energy Commission ("CEC") to the California Air Resources Board ("CARB"), in accordance with Assembly Bill ("AB") 32. 1/

The guidelines and recommendations developed in Phase II will address (1) combustion of natural gas by non-electricity generator end-use customers; and (2) all transmission, storage and distribution of natural gas within California. These guidelines are intended to apply to investor-owned utilities ("IOUs") regulated by the Commission and to other natural gas entities. While Phase II will focus primarily upon development of guidelines to be submitted for CARB's consideration, the Commission may also adopt regulations addressing GHG emissions of entities subject to its jurisdiction.^{2/}

The ALJ Ruling sets forth several preliminary recommendations of Public

Utilities Commission Staff regarding the regulatory treatment of GHG emissions in the natural gas sector ("Staff Recommendations"), along with a proposed procedural schedule for development of guidelines regarding GHG emissions policies for the natural gas sector. The ALJ Ruling invites parties to offer statements concerning the scope, schedule and need for evidentiary hearings, as well as comments regarding the Staff Recommendations. Recommendations.

As explained in more detail below, SDG&E and SoCalGas recommend that the Commission clarify that the scope of Phase II includes GHG emissions related to non-combustion uses of natural gas by non-electricity generator end-use customers. The Commission should also expressly include as an issue to be considered in Phase II legal issues that might arise, depending upon the design of the proposed guidelines. Finally,

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ALJ Ruling, p. 2.

² *Id.* at pp. 2-3; see, also, D.07-05-059.

 $[\]frac{3}{2}$ Id at n 7

 $[\]frac{4}{}$ *Id.* at p. 1.

SDG&E and SoCalGas propose certain modifications and identify issues to be addressed in connection with the Staff Recommendations.

II.

THE SCOPE OF PHASE II SHOULD BE EXPANDED TO CONSIDER THE PROPER METHOD OF ACCOUNTING FOR NON-COMBUSTION USES OF NATURAL GAS AS WELL AS LEGAL ISSUES RELEVANT TO POTENTIAL JOINT RECOMMENDATIONS

The ALJ Ruling provides that "the natural gas inquiry in Phase 2 will address GHG emissions associated with (1) combustion of natural gas by non-electricity generator end-use customers and (2) all transmission, storage and distribution of natural gas within California." It is important to note, however, that use of natural gas by non-electricity generator end-use customers is not limited to activities involving combustion. Accordingly, the Commission should clarify that the proposed scope of Phase II includes consideration of non-combustion uses of natural gas by non-electricity generator end-use customers.

In addition, the Commission should expand the scope of Phase II to expressly acknowledge the need to consider legal issues that might arise, depending upon the design of the proposed guidelines. Such analysis might include, for example, an examination of whether proposed guidelines run afoul of the U.S. Commerce Clause, which prohibits states from imposing unreasonable burdens on interstate commerce. Evaluation of the potential legal implications of proposed guidelines requires that the guidelines be fairly well-developed and that sufficient detail regarding their proposed implementation be available. Thus, the Commission should direct parties to brief legal

Id. at p. 2.

Natural gas is also used as a feedstock for the manufacturing of a number of products, including chemicals, fertilizers and pharmaceutical products.

⁷ See, *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).

issues, as appropriate, at a point where proposed guidelines are adequately developed, but prior to reaching final conclusions regarding their merit.

III. COMMENTS REGARDING STAFF PRELIMINARY RECOMMENDATIONS

Attachment A to the ALJ Ruling sets forth the Staff Recommendations, which are described as being preliminary. SDG&E and SoCalGas appreciate the effort undertaken by the Commission to focus the discussion regarding natural gas-related recommendations and perceive that the Staff Recommendations will help to advance the discourse of the parties concerning regulation of GHG emissions in the natural gas sector.

The comments offered by SDG&E and SoCalGas in response to the Staff Recommendations are also preliminary in nature. SDG&E and SoCalGas look forward to further substantive discussion and, where appropriate, hearings on the issues raised by the Staff Recommendations. SDG&E and SoCalGas intend to be actively involved in the dialogue concerning these issues and provide the comments herein as a starting point for discussion.

A. Emissions of Smaller End-Users should not be Regulated at the Distribution Utility Level Inasmuch as the Utility has No Direct Control over End-Users' Natural Gas Usage

The Staff Recommendations include the proposal that emissions from smaller end users be regulated at the distribution utility level rather than at the point of combustion. This preliminary proposal is based upon the rationale that "investor and publicly-owned utilities are in the best position of any midstream source to affect residential and commercial end users' consumption patterns through energy efficiency programs and customer education."⁸ While the observation that the utilities may have some ability to

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^{8/} ALJ Ruling, Appendix A, pp. 15-16.

influence end-users' consumption patterns may be correct, it is clear that the utilities have no ability to actually *control* customers' natural gas usage. Utilities are not, for example, permitted to interrupt provision of service in order to control emissions levels. Thus, holding the utilities accountable for GHG emissions related to the natural gas usage of small end-users would likely accomplish little in terms of GHG emission reductions and could unfairly penalize the utilities for activities beyond their control.

SDG&E and SoCalGas do, however, recognize the supportive role that can be played by the utilities in reducing the GHG emissions of smaller end-users. A more rational approach than that set forth in the Staff Recommendations would be to address the GHG emissions associated with such customers through a suite of programmatic measures designed to incent customers to reduce their emissions. Measures could include, for example, appliance and building standards, mandatory appliance upgrades triggered by property sales and transfers, and incentives and rebates. Each utility could be held accountable for the success of the programs under its control, as measured by achievement of therm savings and resulting emission reduction targets. This approach would likely be effective in achieving the Commission's aim of ensuring reductions in the GHG emissions of smaller end-use customers, without putting gas utilities at risk for actions outside their control.

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See, e.g., discussion of Energy Efficiency Shared Savings Incentive Mechanism in R.06-04-010.

B. The Recommendation that Industrial Customers be Covered as a Point Source Must be Revised to Distinguish Between Large and Small Industrial Customers

The Staff Recommendations propose that non-electric generation "industrial customers" be covered as a point source. The discussion following this recommendation does appear to recognize a distinction between large and small industrial customer, but does not provide a size demarcation to be used as a basis for differentiating between such customers.

SDG&E and SoCalGas propose that the Commission consider adopting the size designations recommended by CARB. For example, the CARB Workgroup on Reporting General Stationary Combustion GHG Emissions has proposed that "large" industrial customers be defined as industrial customers whose annual emissions are at or above 25,000 metric tons of CO₂ per year. Different specifications might be applied to certain customers, such as cement plants and refineries. CARB has not yet adopted the definitions proposed by any of its technical workgroups, but SDG&E and SoCalGas recommend that the Commission adopt definitions of "large" customers that are consistent with the definition ultimately adopted by CARB.

C. The Commission Should Undertake Detailed Modeling for the Natural Gas Sector in Order to Evaluate Design Options

The Staff Recommendations note that "Staff does not propose to undertake detailed modeling for the natural gas sector along the lines of that being conducted for electricity." SDG&E and SoCalGas urge reconsideration of the conclusion that

 $[\]frac{10}{10}$ ALJ Ruling, Appendix A, p. 16.

¹¹ See, Presentation of the CARB Workgroup on Reporting General Stationary Combustion GHG Emissions, dated June 25, 2007, p. 19.

⁽http://www.arb.ca.gov/cc/ccei/presentations/GSCSlides 6 25 07.pdf).

 $[\]frac{12}{}$ See, id. at p. 29.

ALJ Ruling, Appendix A, p. 17.

modeling for the natural gas sector is unnecessary. The natural gas sector may experience significant economic impacts from adoption of GHG regulations, depending upon the design option selected. If a cap and trade program is recommended, for example, the economic impact on natural gas customers could be considerable to the extent that the utilities' only means of meeting GHG reduction requirements is influencing customers' consumption patterns by raising prices.

Detailed modeling is required in order to fully understand and evaluate the potential impacts associated with the various design options. Accordingly, SDG&E and SoCalGas recommend that detailed modeling of the impacts of potential design options be performed during Phase II.

C. The Commission Should Consider the Implications of Inter-Sector Fuel Switching under a Cap and Trade Program

The discussion preceding recitation of the eight specific Staff Recommendations acknowledges the importance of considering issues related to fuel switching in the event a cap and trade program is adopted in California. The Staff Recommendations themselves, however, do not address this critical issue. This is a key consideration in design of a cap and trade program, thus as the discussion in Phase II moves forward, this issue will require the attention of the Commission and stakeholders.

IV. CONCLUSION

For the reasons set forth above, the Commission should clarify that consideration of GHG emissions related to non-combustion uses of natural gas by non-electricity

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^{14/} *Id.* at p. 13.

generator end-use customers is within scope of Phase II of the instant proceeding and should expand the scope of Phase II to expressly acknowledge the need to consider legal issues that might arise, depending upon the design of the proposed guidelines. In addition, the Commission should consider the comments offered by SDG&E and SoCalGas in response to the Staff Recommendations and ensure that the issues raised herein are addressed and resolved, as appropriate.

Respectfully submitted this 26th day of July, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **PREHEARING CONFERENCE STATEMENT**

OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND SOUTHERN

CALIFORNIA GAS COMPANY (U 904 G) has been electronically mailed to each

party of record on the service list in R.06-04-009. Any party on the service list who has

not provided an electronic mail address was served by placing copies in properly

addressed and sealed envelopes and depositing such envelopes in the United States Mail

with first-class postage prepaid.

Copies were also sent via Federal Express to Commissioner Michael R. Peevey

and the Assigned Administrative Law Judges Charlotte TerKeurst, Jonathan Lakritz, and

Meg Gottstein.

Executed this 26th day of July 2007 at San Diego, California

/s/ Jodi Ostrander

Jodi Ostrander

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